

REMARKS/ARGUMENTS

In response to the Final Office Action of October 31, 2005, Applicant requests re-examination and reconsideration of the instant application.

Applicant respectfully submit that the abovementioned Final Office action (October 31, 2005) fails to properly address the limitation added by amendment to claims in the Response by Applicant (filed August 15, 2005), as discussed in detail below. Therefore, Applicant believes the finality of the instant office action is premature and should be vacated.

Claim Status/Support for amendments

Claims 1-18 remain pending in the instant application.

Claim 1 was amended in the previous response (filed August 15, 2005) to specifically point out the pair of shelf support members being constructed and arranged for adjustable attachment by a suitable fastening means anywhere along the longitudinal length of the pair first attachment tubes, such that the shelf support members can be adjusted to support correspondingly sized sporting equipment, such as smaller sporting goods (e.g., footballs, softballs, etc.,) or larger sporting goods (e.g., basketballs, volleyballs and the like.)

Similarly, claim 2 was amended in the aforementioned response

to define a second pair of shelf support members which extend between a pair of third attachment tubes; the second pair of shelf support member being constructed and arranged for adjustable attachment by a suitable fastening means along the longitudinal length of the pair of third attachment tubes in a generally parallel spaced apart relation to support correspondingly sized sporting equipment thereon.

Rejection under 35 USC 103(a)

Claims 1-18, as originally presented, stand rejected under 35 USC 103(a) as allegedly being unpatentable over Felsenthal (US Patent No. 6,604,473) in view of Carter, Sr. et al., (US Patent No. 2,478,458).

The Examiner alleges that Falsenthal discloses the device's claimed base seen in Figure 1. It is Applicant's understanding that the teachings of Felsenthal fails to disclose a drawer frame member slidably secured to second attachment tubes.

The Examiner alleges that Carter et al., disclose a drawer frame member (42) secured to attachment tubes (24).

The Examiner then concludes that it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to modify Felsenthal so that the flexible carrier (18, Felsenthal) is slidably supported on the frame as taught by Carter

for the purpose of providing easier access to the flexible carriers.

The Examiner further asserts the number of shelves (for the purpose of holding more articles), the specific means for attaching the flexible carriers to the frame (for the purpose of ease of removal), the manner in which the cross bar members are attached to the frame (rivet, bolt, etc.,) would have been matter of choice of well known expedients in the art equally interchangeable and mechanically equivalent used and known by those of ordinary skill in the rack and shelving art. The Examiner also notes the auxiliary brackets (28) for holding various articles and casters (24) in Felsenthal.

Applicants respectfully disagree with the Examiner's determination that the claimed subject matter is obvious.

Claim 1, as previously amended, recites a multi-configurational sports equipment organizer comprising, *inter alia*, a first pair of transverse horizontal attachment tubes (16,16'; FIG. 1) each extending between and secured to each side frame and a first pair of shelf support members (24; FIG. 1) extending between the pair of first attachment tubes. The pair of shelf support members being constructed and arranged for adjustable attachment by a fastening means along the longitudinal length of the pair of first attachment tubes, wherein the adjustment

maintains the pair of shelf support members in a generally parallel spaced apart relation to support correspondingly sized sporting equipment thereon. This allows the user to readily adjust the shelf supports by way of removable fasteners along the first attachment tubes to accommodate different sized sporting equipment for easy individual storage personalization (see page 7, lines 19-21; page 13, lines 2-14 of the instant specification).

The organizer, as currently claimed, also includes a second transverse horizontal attachment tube extending between and secured to said forward and rearward corner posts at about a mid portion of the side frames, the second attachment tube adapted for attachment of a drawer frame member. The drawer frame member extending between and slidably secured to the second attachment tubes and constructed and arranged to support at least one flexible equipment carrier in an open position. The flexible equipment carrier including a means for attaching it to the drawer frame in an open position.

It is noted that the instant rejection of all pending claims (1-18) appears to be merely a reiteration of the previous rejection (mailed July 06, 2005) although Applicant's response filed (August 15, 2005) introduced a previously unclaimed limitation into independent claims 1 and 2, namely, the pair of shelf support members being constructed and arranged for adjustable attachment by

a fastening means along the longitudinal length of the first attachment tubes. (Emphasis added.) This limitation does not appear to have been addressed and/or received patentable weight by the Examiner in the instant Office Action; when evaluating claims for obviousness under 35 USC 103, all the limitations of the claims must be considered and given weight. Clarification is hereby requested.

Furthermore, the Examiner has neglected to point out which reference Falsenthal or Carter, Sr. et al. is relied upon for the teaching of the limitations in the instant claims, for example, the instant rejection does not address the "drawer frame member which includes a divider member extending between and secure to about the midpoint of a front frame member and a back frame member, wherein the frame member is divided into two substantially equally sized frames, wherein said drawer frame member is constructed and arranged to hold a first end of two flexible carrier in an open position", as set forth in claim 5; "said vertically extending corner posts have a generally square cross-section", as set forth in claim 11; "said vertically extending corner posts have a generally round cross-section", as set forth in claim 12; "said transverse top horizontal member and said end posts are integrally formed by a bent metal tube", as set forth in claim 13; "wherein said first, said second and said third attachment tubes are

provided with apertures integrally formed therein for attaching equipment support accessories thereto, wherein said accessories may be attached to said attachment tubes without separate fasteners", as set forth in claim 14; "wherein the second cross bar for securing said vertical side frame in a spaced generally parallel relationship includes a pair of gusset members, each said gusset member including a first end and a second end, wherein said first ends of said gusset members are secured to each distal end of said cross-bar and wherein said second end of said gusset members are secured to a respective rearward corner post of each said side frame", as set forth in claim 18. Absent a clear teaching of these aforementioned claim limitations in the cited prior art, the Examiner must indicate these claims allowable, at the very least, the finality of the instant office action is improper and should be withdrawn so that the Examiner may address these outstanding limitations.

The Examiner is respectfully reminded that in order to establish a *prima facie* case of obviousness, three basic criteria must be met (MPEP 2143). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art

reference (or references when combined) must teach or suggest all of the claim limitations.

As previously set forth in the last Response by Applicant, neither Falsenthal or Carter et al., alone or in combination teach or suggest all of the limitations as previously amended, specifically, neither reference teach a pair of adjustable shelf support members that are attached by a fastening means along the longitudinal length of the pair of first attachment tubes to support correspondingly sized sporting equipment thereon, as currently recited in the claims.

This is evidenced in the asseveration by the Examiner that "the specific means for attaching the flexible carriers to the frame (for the purpose of ease of removal), the manner in which the cross bar members are attached to the frame (rivet, bolt, etc...) would have been matter of choice of well known expedients in the art equally interchangeable and mechanically equivalent used and known by those of ordinary skill in the rack and shelving art." While, the Examiner makes specific reference to the manner of attachment for the *flexible carriers* (40; FIG. 1) and the *cross-bar* members (15, 15', 15''), there is no mention in the manner of attaching the pair of adjustable shelf support members (24; FIG. 1) by a fastening means such that they are adjustable along the longitudinal length of the pair attachment tubes to support

correspondingly sized sporting equipment thereon.

The present inventor has devised a unique and novel multi-configurational sports organizer capable of storing a broad array of different sized sports equipment by providing horizontal shelf supports which are quick and easy to adjust to different sized sporting equipment. This is unlike the Felsenthal reference which discloses a laundry center comprising a plurality of vertical posts (22) connecting together a top wire storage shelf (14), a middle snake wire frame (16) and a bottom wire shelf (12). While the rigid wire construction of Felsenthal provides the necessary stability to laundry center it does not render the shelves adjustable along their horizontal plane to support correspondingly sized items thereon. The only adjustability in Felsenthal comes from the use of snap-on connectors (26, 35, 49) to secure various items (i.e., wire basket, ironing board) to the vertical posts so that they may be adjusted up or down by repositioning these plastic connectors over grooves spaced apart along the vertical posts, see column 3, lines 39-47, Felsenthal.

Similarly, Carter et al. fail to teach shelves which are adjustable along their horizontal plane to support correspondingly sized items thereon. Carter et al., disclose an apparatus for transporting a large number of pies to and from the baking oven. The invention includes removably, rigid support trays (26)

fabricated of steel or light weight metals having apertures (36) into which conventional pie pans can be hung. Extending transversely with respect to the wheeled rack and suitably secured to uprights (14), as by welding, riveting or the like, are a plurality of spaced parallel rods, or bars (24) onto which the trays (26) are slidably and removably supported thereon. The primary objective of the invention is to eliminate any unnecessary handling of the pies, which often leads to wasteful breakage and spoilage.

The Examiner generally asserts that it would have been obvious to modify the laundry center of Felsenthal with the baking transport rack taught by Carter et al., so that easier access would be provided to the flexible carriers (18) of Felsenthal; however, the Examiner does not explain how or why would one of ordinary skill in the art be motivated to combine a removable apertured pie-supporting trays comprising a plurality of pie-shaped apertures in a laundry center?

The Examiner has neglected to explain how would one of ordinary skill in the art attach the steel rod or bars (24) of Carter et al., to the wire middle snake frame (16) or vertical posts (22) of Felsenthal? Felsenthal teaches that the shelving and other attachments are secured by plastic snap-on connectors (26, 35, 49) which allow the plastic connectors to frictionally engage

grooves formed in the vertical posts (22) to provided adjustability of height for the various items (e.g. ironing board 38, wire basket 28).

Assuming, *arguendo*, it was possible to weld, or otherwise permanently attach, the rod 24 of Carter et al., to do so would render the Felsenthal reference unsatisfactory for its intended purpose and change the principle of operations, that being the ability to adjust the attachments along the vertical posts. The Examiner is reminded that the proposed modification cannot change the principle of operation of a reference (see MPEP. 2143.01).

The Examiner must also show that one of ordinary skill in the art would have a reasonable expectation of success when modifying the reference or combining the reference teachings. See MPEP 2143.01. It is, at best, unclear whether the combination of the steel rod of Carter et al., and the wire middle snake frame (16) or vertical posts will work together, hence, no "reasonable" expectation of success, as required to establish a *prima facie* case of obviousness. See MPEP 2143.02.

Without answers to these questions set forth above, one of ordinary skill in the art would not be able to ascertain any advantages for modifying the teachings, and therefore would not have any reason to be motivated to make these modifications. Since the neither of the references (Felsenthal or Carter et al.) or the

general knowledge in the art gives direction as to how (or why) one would be motivated to modify the laundry center of Felsenthal with the baking transport rack taught by Carter et al, Applicant respectfully submit that the Examiner is applying an improper "obvious to try" rationale in support of the obviousness rejection.

Moreover, the Examiner is reminded that a reference used in a rejection under 35 USC 103(a) should be analogous in order to properly establish a *prima facie* case of obviousness. Neither reference (Carter et al. or Felsenthal) are in the field of Applicant's endeavor or reasonably pertinent to the particular problem with the which the Applicants were concerned, that is, a storage organizer capable of supporting sports equipment of various sizes. (See MPEP 2145 IX and *In re Oeticker*, 977 F.2d 1443, 1446. 24 USPQ 2d 1443, 1445 (Fed. Cir. 1992)).

In light of all of the above remarks, Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness and further contend that a person of ordinary skill in the art, having the references Felsenthal and Carter et al., in front of him/her would not have the information and motivation necessary to arrive at Applicant's invention.

Applicant respectfully submit that the Examiner has failed to satisfy all the criteria necessary to establish a proper rejection of claims under 35 USC 103(a); 1) suggestion or motivation, either

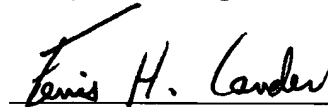
in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine teachings; 2) reasonable expectation of success and 3) the reference or references when combined must teach or suggest all of the claim limitations.

Accordingly, Applicants respectfully submit that the claimed equipment organizer distinguishes over the prior art and respectfully request that this rejection of claims 1-18 under 35 USC 103(a) now be withdrawn.

CONCLUSION

In light of the foregoing remarks, amendments to the specification and amendments to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,



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